

Department of Planning and Environment

Our ref: DA21/15298

Ms Casey Joshua
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Office of the Independent Planning Commission NSW
Suite 15.02, Level 15
135 King Street
Sydney NSW 2000

27 June 2022

Helipad Penrith Lakes (DA21/15298) – Response to Questions on Notice

Dear Ms Joshua

Thank you for your letter of 22 June 2022 providing further questions from the Independent Planning Commission (the Commission) arising from the Department of Planning and Environment's (the Department) meeting with the Commission of 20 June 2022.

I am pleased to provide responses to the Commission's questions. These are provided in **Attachment 1**.

Please contact Alexander Scott, A/ Director Freight Assessments and Management on 8217 2096 or alexander.scott@planning.nsw.gov.au if you have any further queries.

Yours sincerely,



Erica van den Honert

Executive Director
Infrastructure Assessments

Attachment 1: Response to Questions on Notice

1. Permissibility

- a. *Beyond public access, what does the Department consider are the fundamental differences between a heliport and helipad? Please provide further detail in relation to how the Department is satisfied the proposal is a permitted use.*

Response: The Department considers the main difference between a heliport and helipad relates to public access.

The Department notes that a helipad is defined as “a place not open to the public used for the taking off and landing of helicopters” and a heliport as “a place open to the public that is used for the taking off and landing of helicopters, whether or not it includes (a) a terminal building, or (b) facilities for the parking, storage or repair of helicopters”.

The heliport definition explicitly states that a helipad may or may not include a terminal or facilities for the parking, storage or repair of helicopters. The helipad definition does not explicitly allow or disallow such facilities. We therefore consider that while the inclusion of these facilities is not determinative to the characterisation of the use as a helipad or heliport, whether the site is open to the public or not may be.

In this regard, the Department notes that the proposed facilities for the parking, storage or repair of helicopters would exclusively serve the Applicant’s fleet and would not be a service provided to other helicopter operators. The Department is satisfied these proposed facilities would be ancillary to the helipad use.

- b. *Does the Department agree with all of the reasoning regarding the permissibility of the use put forward by the Applicant in the Supporting Legal Advice at Appendix P to the EIS? If not, which elements of that reasoning does the Department not agree with?*

Response: The Department reviewed the Applicant’s Supporting Legal Advice and broadly agrees with the Applicant’s reasoning insofar as the Department has reached the same conclusion about the permissibility of the use.

2. Hours of Operation

- a. *The Commission notes the various acoustic assessments for this Project were prepared for hours of operation from 7am to 10pm. However, the recommended conditions allow operations from 6am to 10pm. Please clarify how sleep disturbance matters were considered for the conditioned hours of operation, in particular, from 6:00am to 7:00am.*

Response: The Department’s assessment did not consider sleep disturbance matters and acknowledges operation earlier than 7am would require this consideration. As the Applicant’s acoustic assessments do not contemplate operation earlier than 7am or consider sleep disturbance, the Department considers it would be appropriate to restrict the hours of operation to 7am to 10pm. Alternatively, should the Commission consider obtaining further information from the Applicant about sleep disturbance, the Department would be pleased to assist in its assessment.

3. Aboriginal Cultural Heritage

- a. *The Commission notes an Aboriginal Heritage Due Diligence Assessment was provided to support this Application. How did the due diligence process confirm for the Department that there will be no impacts on tangible or intangible Aboriginal Cultural Heritage significance at the site or Aboriginal cultural heritage values? Further to this, on what basis did the Department waive the requirement for an ACHAR to be undertaken?*

Response: The Applicant's Due Diligence Assessment is consistent with the requirements of the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW, 2010). This is the guideline specified in the *National Parks and Wildlife Regulation 2019* to scope whether an ACHAR is required.

The Due Diligence Assessment confirmed:

- there are no known Aboriginal objects or places within the site
- past quarrying of parts of the site have eliminated any archaeological potential
- and works on the remainder of the site, which has a low-moderate archaeological potential, would not involve ground disturbance beyond the topsoil.

The Department is satisfied this demonstrates the proposal does not require further archaeological investigation, but has recommended conditions of consent requiring an unexpected finds procedure to be implemented in the unlikely event Aboriginal objects are found.

The Department "waived" the requirement for an ACHAR as the initial requirement in the Department's Secretary's Environmental Assessment Requirements was made in error. Applicants may undertake a due diligence assessment to determine whether further archaeological assessment (i.e. an ACHAR) is required to support an Aboriginal Heritage Impact Permit application. If the due diligence assessment determines no further assessment is required, an ACHAR and an AHIP are not required. The Department's SEARs incorrectly pre-supposed this process.

4. Flooding

- a. *The Department notes the SEPP (Western Sydney Parklands) 2021 sets the flood planning level for the Site and that the proposed development is above this level. Please confirm what the flood planning level is for this Site and what portions of the site are above that level?*

Response: The flood planning level is the 1:100 Average Recurring Interval flood plus one metre freeboard. The Applicant's floodplain risk assessment notes the 1:100 ARI flood level is approximately 22m (AHD). The *Penrith City Council Nepean River Flood Study* (Advisian, 2018) suggests the flood level is approximately 22.5m (AHD). The parts of the site proposed for physical works are at 25m (AHD) or higher. Existing car parking to the north of the former Penrith Lakes Development Corporation building, proposed to be used unaltered for the proposed development, is within the flood planning level.

- b. *Noting the above question in relation to the flood planning level, can the Department confirm that recommended conditions F19 and F20 require all chemicals, fuels and oils to be stored above the flood planning level?*

Response: The conditions do not explicitly require all chemicals, fuels and oils to be stored above the flood planning level. The Department understands that the relevant standards require flooding risks to be considered in the design of storage facilities.

The part of the site identified for fuel storage and helicopter maintenance is above the flood planning level. While the Department is satisfied chemicals, fuels and oils would be stored above the flood planning level, the Department would have no concern adding a condition explicitly requiring this.

5. SES engagement

- a. *Noting that the proposal would be an emergency hub, and is subject to flood risk, did the Department seek comment from the SES as to the site's suitability?*

Response: The Department did not seek comment from the SES as to the site's suitability. The Department is satisfied that the proposal is a permissible use on the site and has assessed the proposal against relevant Section 4.15 considerations, including those related to flooding. The suitability of the site as an emergency hub is a matter for the SES and the Applicant to consider as part of their contractual arrangements.

6. Tourism South Precinct

- a. *What proportion of this precinct does this site take up? Will this development preclude the development of the remainder of the site for other uses and buildings permitted in the land use table?*

Response: The Tourism South Precinct as identified in Part 5.2 of the *Penrith Lakes Development Control Plan 2021* consists of five parcels of land with a combined area of approximately 15.5 hectares. The subject site is the largest of the five parcels with an area of approximately 11.25 hectares, of which approximately two hectares would be used for the proposed development.

The Department does not consider that the proposed development would intrinsically preclude development on the remainder of the site (although that may require future subdivision of the site) or elsewhere in the Tourism South Precinct. Any future development application on the site or elsewhere in the precinct would need to consider surrounding development and would be assessed on its merits.

7. Penrith City Council Green Grid Strategy

- a. *Provide further detail of the Department's consideration of Penrith City Council's Green Grid Strategy and the proposed pedestrian link between Great West Walk in Cranebrook and the Great River Walk through the Penrith Lakes site.*

Response: Penrith City Council's Green Grid Strategy identifies an indicative future pedestrian link through or near the site of the proposed development.

The Department notes that the proposed development includes little change to existing built form and landscaping on the site and would not affect the broad implementation of the Strategy. Further information about the pedestrian link's exact location would be required to determine the proposed development's effect on that link.